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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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09/501,970 02/10/00 ALMQVIST

C 00-148

EXAMINER

TM02/1009

GREGORY P LA POINTE
BACHMAN & LA POINTE P C
900 CHAPEL STREET
NEW HAVEN CT 06510

TRANS

ART UNIT

PAPER NUMBER

2643

DATE MAILED:

10/09/01

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

Office Action Summary

Application No.

09/501,970

Applicant(s)

ALMQVIST, CHRISTER

Examiner

Sinh Tran

Art Unit

2643

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-3 and 5-7 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) 1-3 and 5 is/are allowed.
- 6) ☐ Claim(s) 6 and 7 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claims ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are objected to by the Examiner.
- 11) ☐ The proposed drawing correction filed on ____ is: a) ☐ approved b) ☐ disapproved.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

Attachment(s)

- 15) ☐ Notice of References Cited (PTO-892)
- 16) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 17) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) ____.
- 18) ☐ Interview Summary (PTO-413) Paper No(s). ____.
- 19) ☐ Notice of Informal Patent Application (PTO-152)
- 20) ☐ Other: _____.

DETAILED ACTION

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 6-7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fitzgerald (5,113,428) in view of Shurman et al (6,091,832).

Regarding claim 6, Fitzgerald discloses a headset comprising first and second auditory cups (12, 14); a stirrup (16); a microphone (62); an electronic unit (105); loudspeakers (94, 96); a radio unit (54); and button set (50 formed the one group and 67 and 117 formed another group) arranged in a separate recesses in the first ear cup (see Fig. 1). The buttons group 50 is formed in recesses on the outer surface of the cup and buttons 67 and 117 is formed in recesses on the inner surface of the cup.

see Shurman et al in previous Action

Regarding claim 7, Fitzgerald discloses an acoustic headset comprising first and second ear cup (12, 14); a headband (16); a loudspeaker in each one of the cups (94, 96); a microphone (62); a radio unit (54); electronic control unit (105); button set (101-113) having being arranged in recesses (the recesses that hold the buttons 101-113) in the first cup, the recesses and the buttons therein being disposed along a curved path (the buttons formed a curved path) adapted to the length of the wearer's fingers.

Response to Arguments

3. Applicant's arguments filed 8/2/01 have been fully considered but they are not persuasive.

The examiner agrees with the applicant that the items 121 and 122 are not buttons but rather connections for allowing the batteries of the portable unit to be charged. However, the examiner is now reading elements 67 and 117 as the second group of button in the amended claim 6 (see rejection above).

Applicant further argues that there is no suggestion in the '428 patent that the buttons 101-111 and the key pad 50 be located in separate recesses in accordance with the claimed features of new independent claims 6 and 7. Claims 6 and 7 only require that the buttons be located or arranged in separate recesses and not a common recess as argued. Anyhow, Fitzgerald clearly show button group 101-113 arranged in different recesses than group keypad 50 recesses because it is clearly shown they are mounted within different recessed surfaces and different housings.

4. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after

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the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Allowable Subject Matter

5. Claims 1, 2, 3 and 5 are allowed.
6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Sinh Tran whose telephone number is (703) 305-4040. The examiner can normally be reached on M-F 7:00AM-3:30PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Curtis Kuntz can be reached on (703) 305-4708. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 308-9051 for regular communications and (703) 308-9051 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 305-4700.

Any response to this action should be mailed to:

Commissioner of Patents and Trademarks
Washington, D.C. 20231

or faxed to:

(703) 308-9051, (for formal communications intended for entry)

or:

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(703) 308-6296, (for informal or draft communications, please label
"PROPOSED" or "DRAFT")

Hand-delivered responses should be brought to Crystal Park II, 2121 Crystal Drive, Arlington, VA., Sixth Floor
(Receptionist).



Sinh Tran
Primary Examiner
Art Unit 2643

ST
October 4, 2001